

**Notice of Allowability**

Application No.

10/606,156

Applicant(s)

ROTHSCHILD, STEVEN M.

Examiner

Andrea M. Valenti

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 17 February 2005.
2. ☒ The allowed claim(s) is/are 2 and 3.
3. ☒ The drawings filed on 25 June 2003 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |   |  |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input type="checkbox"/> Examiner's Amendment/Comment                               |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance   |
|   | 9. <input type="checkbox"/> Other _____.   |

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### REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance:

The cited references U.S. Patent No. 1,595,441; U.S. Patent No. 1,668,143 U.S. Patent No. 6,112,703 A; U.S. Patent Pub. No. US2004/0092198 A1; U.S. Patent No. U.S. 2,687,302; U.S. Patent No. 5,769,682 A; U.S. Patent Pub. No. US2002/0134318 A1; U.S. Patent No. 1,668,143; U.S. Patent No. 6,609,944 B1; U.S. Patent No. 6,186,095 B1; U.S. Patent No. 3,995,855; PCT WO 90/07961 teach that it is known to have a ball freely floating and completely contained in another ball; that it is known to place a noise making device inside an inner ball contained in an outer ball; that it is known to mount a squeaker in an elastomeric ball wall; it is known for an outer ball to have an air hole; and it is known to enclose a squeaker within an outer flexible shell. In particular, U.S. Patent Pub. No. US 2004/0092198 a continuation in part of U.S. Patent application No. 09/532,665 filed 21 March 2000 discloses in Fig. 5 and Fig. 6 an outer flexible wall, and inner flexible wall, and squeaker. However, applicant's claim contains the language of "consisting of" in the preamble which excludes any element, step, or ingredient not specified in the claim and "consisting of" is defined as closing the claim to the inclusion of materials other than those recited except for impurities ordinarily associated therewith. Therefore, U.S. Patent Pub. No. US 2004/0092198 is excluded because it teaches additional elements not specified in the claim.

The prior art of record all fails to show, and fails to make obvious, either alone and/or in combination A pet toy consisting of. (a) an inner flexible elastomer ball

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having an inner ball wall, (b) a squeaker mounted in the inner ball wall, (c) an outer flexible elastomer ball having an outer ball wall, said squeaker being separate from the outer wall, (d) an air hole mounted in the outer ball wall, and (e) the inner ball being entirely within the outer ball and free-floating within the outer ball.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

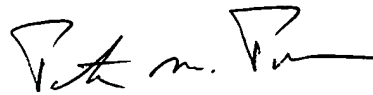
Should you have questions on access to the Private PAIR system, contact the

Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrea M. Valenti  
Patent Examiner  
Art Unit 3643

2 May 2005



Peter M. Poon  
Supervisory Patent Examiner  
Technology Center 3600

5/4/05